

BOARD OF APPEALS CASE NO. 5192

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BEFORE THE

APPLICANT: Michele J. Hadaway

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow storage
and sales of farm equipment trailers in the AG
District, 1609 Crestview Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/5, 6/12, 8/14 & 8/21/02

HEARING DATE: 7/22/02, 9/23/02 & 4/14/03

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Record: 6/7, 6/14, 8/16 & 8/23/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Michele J. Hadaway, is requesting a special exception, pursuant to Section 267-53D(1) of the Harford County Code, to allow storage and sale of farm equipment trailers in an AG/Agricultural District.

The subject parcel is located at 1609 Crestview Road, Joppa, Maryland 21085 and is more particularly identified on Tax Map 61, Grid 1A, Parcel 405. The parcel consists of 3.92± acres, is presently zoned AG/Agricultural, and is entirely within the Third Election District.

Findings of Fact

The Applicant, Michele Hadaway, appeared and testified that she owns the subject parcel. Her husband is a sales representative for Hurst Trailers and sells trailers from the property. The Applicant characterized these as farm trailers. The trailers that are delivered to the property and sold from the property by the Applicant's husband are stored in a fenced area. Using 18 photographs introduced as Applicant's Exhibits 1-18, the Applicant described her property, the area where the trailers are stored and the other improvements found on the property. The trailers are not stored in a closed building but, according to the witness, they cannot be seen from the road when they are in the fenced area. The witness indicated that her husband sells the trailers generally by way of internet sales. She admitted she was not completely familiar with his business. She indicated that three trailers on the property are used to support the farm activities related to pot bellied pigs.

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She produced an MVA registration card for one of these trailers that indicates on the face of the card, its registration as farm equipment. There are currently 50 pigs on the parcel, according to the witness, that are not sold but are used for “medical research” purposes of an undisclosed nature. In addition to the three (3) personal trailers the witness testified that there were 11 trailers on the property. Four (4) of those were single-axle trailers and the others are larger and include both two and three axle trailers.

The home is located on a private drive that is used for ingress and egress by eight (8) other residences besides hers. Of those 8, five (5) other homes lie beyond the Applicant’s and ingress and egress for those homes can only be accomplished using the drive. Other improvements on the property include a house, two concrete feeding areas, five (5) small barns and two larger utility sheds. According to the witness no commercial traffic uses the driveway that serves both her home and 5 other homes located down the drive. The witness admitted that once, about one year prior to the hearing, a commercial truck delivered three trailers to the parcel. When asked how many trailers are sold by her husband from the property, the witness initially could not recall. Upon further questioning, the witness stated that ten or twelve trailers were sold from the property this past year and perhaps 20 last year. The witness described the delivery operation as requiring trailers to arrive on a flat-bed truck and be off-loaded using a forklift truck. Apparently 5 or 6 are delivered at one time and are stacked up in the fenced area. Some trailers are taken off site and displayed for sale. In addition to the forklift, the witness indicated that there is a backhoe on her property. While denying that the backhoe is used off-site, the witness indicated that it is used on the farm and is carried around the property on one of her three trailers. The witness stated that the backhoe is usually transported on the property this way to avoid the ruts made by the backhoe on muddy ground. The backhoe is used for burying pigs and doing excavation work under the barns, to clean up brush, tree removal and to secure things better. There is also a Hyundai automobile and a Dodge truck on the property. The truck has a hitch and is also used for picking up and delivering trailers. The witness indicated that her husband was not a licensed sales representative nor was he a licensed trailer dealer. Mr. David Wagenfuehr was called briefly to testify that he is employed part time by Mr. Hadaway to perform landscaping and to assist in caring for the pigs, cleanup and maintenance. Mr. Wagenfuehr denied being employed in relation to trailer sales.

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The Department of Planning and Zoning was represented before the Hearing Examiner by Mr. Anthony McClune. Mr. McClune stated that the Department of Planning and Zoning (Department) recommends denial of the Applicant's request for a number of reasons. First, the witness pointed out that the original application filed in this case requested only special exception approval for storage and sale of equipment trailers. Later an amended application was filed that added the word "farm" before the word "equipment". The first reason for recommending denial, according to Mr. McClune is that these trailers are not "farm equipment" but rather general purpose utility trailers held for open sale to the public in general. The property is part of the Stockton Road subdivision and this particular area is residentially developed. There are a number of homes in this subdivision sharing a common drive (Crestview Road), each lot is about 3 acres in size and, despite the agricultural zoning, the uses are all residential in nature with the exception of the Applicant's pig operation. The Department is of the opinion that deliveries of large trailers to the property as well as the pick ups after sale will have a greater impact at this location than other agricultural locations where larger lots might be found and the congestion of a small common drive would not be a factor. In Mr. McClune's opinion, the impacts associated with this use at this location would be directly proportional to the number of trailers being delivered to the property and later picked up. McClune also said that the trailers have, at times, been visible from the road and adjacent properties, disputing the earlier testimony of the Applicant in that regard. When questioned about the single registration card issued by the MVA, McClune indicated that these trailers are held for sale to the general public as general utility trailers and have many uses other than as farm equipment. He admitted that some trailers are used as farm equipment but others are likely used for purposes other than farm operations. Mr. McClune expressed concern that Crestview Road was very narrow and privately maintained and was not appropriate in size or scope for the commercial vehicles that would need to use the drive in order to deliver these trailers. Ingress and egress would be impeded if a truck were parked at the Hadaway residence to off-load trailers. Mr. McClune also admitted that he did not know to whom the trailers were sold or for what purposes they were being used.

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Next to testify was Ms. Phyllis Ningard who resides at 1601 Crestview Road. The witness indicated that this subdivision has 9 homes. Crestview Road is her only means of ingress and egress. She drives by the Hadaway parcel frequently and is familiar with it. She indicated that she has seen trailers parked on the road and on the property. She has seen trailers displayed for sale by Mr. Hadaway at other locations including MD Route 152 and U.S Route 1. The witness believes that the Hadaways are engaged in the sale of trailers. The witness stated that you could always see trailers on the Hadaway property from Crestview Road until recently when a small gate or fence like structure was installed. Ms. Ningard indicated that trailers are delivered by flatbed truck rather frequently to the property. She hears a lot of noise when they are delivered and sees a lot of off-loading activity. Crestview Drive is blocked by these commercial truck deliveries which she finds inconvenient. The witness is concerned that such commercial activity on such a small road in a residential area like this will also devalue her property and the properties of her neighbors. The noise from delivery also bothers her and she feels that this type of commercial activity should not be allowed. The witness described the noise as trucks revving up, equipment being banged around and moved around. The witness disputed the Applicant's testimony regarding the number of trailers delivered to and sold from the property. The witness said more than 10 but probably less than 50 trailers were delivered and sold based on her observations. But the witness admitted if she is not blocked by an off-loading truck she does not pay much attention to the comings and goings of different trailers.

Mr. Howard Sullens, Jr. appeared and testified that he resides next door to the Applicant at 1607 Crestview Road. The witness has been at this location for 16 years. The witness indicated that he adjoins the Hadaway property and can see activity on that parcel. During the time he has lived there he has seen helicopters come and go, flatbed trailers, semi's fork trucks and front end loaders. Most of this activity, according to the witness, started about 1 ½ years ago. He can see trailers stored on the Hadaway property. Referring to a photo marked as Protestant's Exhibit No. 1, Mr. Sullens described a gravel or stone covered parking area where semi's, flatbeds and front end loaders are parked. Mr. Sullens stated that the backhoe described by the Applicant is used for off-loading trailers.

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Additionally, Sullens disputed the testimony of the Applicant and Mr. Wagenfuehr by stating that he has observed Mr. Wagenfuehr assisting in the off-loading of trailers on the Hadaway property. Mr. Sullens characterized what was described by the Applicant as an RV Dodge truck as more like a semi, over the road freightliner with tandem axles. Mr. Sullens reluctantly testified that 10-20 trailers per month are delivered to and sold from the property. Mr. Sullens objects to the commercial nature of the trailer operation, the noise from the off-loading and delivery process and has great concern that the value of his property is diminished as a result of the Hadaway trailer operation.

Next to testify was Mr. Francis Ruth who resides at 1501 Crestview Road. He is the last house at the end of the common drive. Mr. Ruth testified that he has observed between 250 and 300 trailers be delivered to the Hadaway property in the past two years. The trailers are brought in stacked on trucks and then off-loaded. With the assistance of Photo Exhibits (Protestant's Exhibit Nos. 2 - 8), the witness described delivery trucks that have come to the Hadaway property, the trailers being delivered and stored and trailers located at remote locations for sale by Mr. Hadaway. The witness expressed strong opposition to what he characterizes as an on-going commercial operation in a residential neighborhood. He has had ingress and egress to his property blocked by delivery trucks off-loading trailers to the Hadaway property.

Last to testify was Mr. Bob Nienstadt, who testified that he owns the Jiffy Hitch dealership and service center on Route 40. He has owned the business for five years. He is a licensed trailer dealer and has been issued a business license by MVA to sell trailers. In his opinion the operation that was described on the Hadaway property is one that requires MVA licensing. The witness indicated that these types of trailers described by the various witnesses and depicted in the photographs could have many uses other than farm use including, but not limited to, transporting building materials, concrete, cars, vans, trucks, storage boxes bricks, stone, mortar, dirt, hay or any other items need to be hauled from one location to another.

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CONCLUSION

The Applicant, Michele J. Hadaway, is requesting a special exception, pursuant to Section 267-53D(1) of the Harford County Code, to allow storage and sale of farm equipment trailers in an AG/Agricultural District.

Harford County Code Section 267-53(D)(1) allows the storage of commercial zone as a Special Exception and states:

“Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
 - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
 - (c) A minimum parcel area of two (2) acres shall be provided.”

ARTICLE VIII, Special Exceptions

Section 267-51. Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

Section 267-52 of the Harford County Code provides as follows:

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.

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- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.

The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319, 1325 (1981) (“Schultz”).

“While the applicant in such a case has the burden of adducing testimony, which will show that, his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely effect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A. 2d 543, 550-551 (1973) (“Turner”).

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The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” See Schultz at 432 A. 2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A. 2d 716, 724 (1974) (“Anderson”).

The law in Maryland is clear that the localized impact caused by a special exception must be unique and atypical in order to justify denial. Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A. 2d 248 (1993) (“Sharp”).

In determining whether the presence of the proposed uses would be more harmful here than if located elsewhere in the AG zone, one must take into account the area where the use is proposed. AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681, 720 A. 2d 925 (1998) (“AT&T”).

In Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995) (“Mossburg”) the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal. There the Court said:

“The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, i.e. greater here than they would generally be elsewhere within the areas of the County where they may be established, ... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or “above and beyond”, then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use

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meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.”

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the Protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the Protestants fail to meet that burden of proof, the requested special exception must be approved.

In turning to the statutory provisions of the Harford County Code, the Hearing Examiner finds that the Applicant failed to establish that the trailers in question satisfy the statutory definition of farm equipment. These particular trailers are of various types and sizes and can be used for any number of purposes as general utility trailers suitable for hauling goods of nearly every conceivable kind. The Applicant was given every opportunity to produce records of sales that could have indicated the type of trailer sold, its generally intended use and could have led to further discovery of the various uses to which these trailers were put. However, the Applicant chose not to produce any such records. Similarly, records were requested of Hurst Trailer, the manufacturer of these trailers, that would have produced similarly helpful information. Moreover, the Applicant failed to produce any testimony in this regard.

Additionally, the statute requires that the area in which these trailers or equipment is to be stored shall be within an enclosed building or otherwise screened from view of adjacent residential lots and public roads. Neighbors testified that they can see these trailers on some occasions as they pass the Hadaway property along Crestview Road. The adjacent neighbor testified that he can see the trailer storage area from his property all of the time and produced photographic evidence that supported his contentions.

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Not only did the Applicant have the burden of proving whether this equipment was farm equipment, the Applicant clearly had the burden of producing facts that would show that the proposed use would not have adverse impacts that would negate the presumption of compatibility of the use. Clearly it was incumbent on the Applicant to produce documentation or other credible evidence that would allow conclusions to be drawn regarding the number of trailers delivered to the site, the method of delivery, the amount of time and the frequency with which the common driveway was blocked and any other evidence necessary to support a presumption of compatibility with the uses in the surrounding neighborhood. Both the Applicant and Hurst Trailer refused to comply with duly issued subpoena's that sought relevant information of just this type that could have supported the Applicant's contention that only 10 to 20 trailers per year were sold from this location. Instead of complying with the requirements of the subpoena the Applicant chose to challenge the issuance of those documents and despite being denied each and every Motion to Quash, continued to refuse to provide any of the documents requested. Even if the requested documents were not produced, the Applicant admitted under oath that she knew little or nothing about the trailer business and that only her husband knew about that, yet, Mr. Hadaway never appeared and offered any testimony regarding the business operations. The Hearing Examiner can only conclude from the Applicant's refusal to comply with the subpoena or have Mr. Hadaway describe the business operations, that those documents would have provided facts that would not have supported the Applicant's statements. Drawing that inference, the Hearing Examiner finds as credible, the evidence from a number of neighboring witnesses that the number of trailers sold from the Hadaway property is closer to 30 per month. Assuming, as the Hearing Examiner must, that 5 to 6 trailers are delivered at one time, the minimum number of trailer deliveries per month is 5 or slightly more than once per week. Of course, there was some testimony that a "freightliner" truck made single deliveries at times but the record was never fully developed in this regard. The Applicant was very reluctant to offer any knowledge of the number of trailer sales made from her property during the testimony taken in July, 2002 and stated that she really was not familiar with the trailer business.

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However, in arguing her Motion to Quash Subpoena before the Harford County Council, sitting as the Board of Appeals, on February 11, 2003, the Applicant stated that in 2001 the Hadaways sold 5 to 6 trailers per month and she qualified her knowledge by stating she prepared the tax returns for the trailer business and knows that to be a fact – the same tax returns requested twice by the Hearing Examiner to establish just that fact but which were never produced as part of this record.

What is undisputed is that the road used for ingress and egress to and from properties in this subdivision is a private drive, is rather narrow and provides the only means of access to the neighborhood properties. Traveling down Crestview Drive, 5 homeowners and their visitors and guests are subject to being barred from both ingress and egress as flatbeds and semi's offload trailers to the Hadaway property. The area is zoned Agricultural but the uses, for the most part, are 3 acre lot residential uses. In addition, a number of homeowners testified that the noise from this operation is annoying and intrusive. These same neighbors characterized the use as commercial and out of place in this neighborhood with potential deleterious impact on neighborhood property values. The claims of the neighbors were not rebutted by the Applicant.

Turning to the provisions of Section 267-9I, of the Harford County Code, entitled, "Limitations, Guides and Standards", the Hearing Examiner makes the following observations regarding this request:

- (1) *The number of persons living or working in the immediate area.*

The uses in this neighborhood are generally residential ones located on lots averaging 3 to 3.5 acres.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to road; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Access to the homes in this neighborhood is via a private drive, Crestview Road. The drive is narrow and represents the only means of ingress and egress for these property owners. 5 residences are located below the Applicant's property on Crestview Road and there was credible testimony that this drive is blocked during the off-loading and delivery process.

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Those neighbors that testified indicated that these blockages occur with some frequency. Deliveries are often made by flatbed truck and some of these trailers are substantial in size -- 2 and 3 axle trailers capable of hauling large pieces of equipment.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposal is a use that is permitted by way of special exception in the Agricultural District with Board approval. There is a presumption of compatibility afforded a special exception use, however, that presumption can be successfully rebutted by facts and circumstances tending to negate the presumption. For the various reasons stated herein, the Hearing Examiner finds that the protestants have provided substantial and credible facts and circumstances negating the presumption of validity normally given to a special exception use. This is particularly true in a case like this one, where the Applicant has produced little or no evidence in support of her own Application. The use is commercial in nature and fails to meet the statutory requirements of the Harford County Code. The use, in the opinion of the Hearing Examiner is not compatible with the residential uses in this neighborhood.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use involved the delivery and off-loading of very large equipment at times. A backhoe and/or forklift are utilized in the off-loading process. Testimony of the neighbors was that the operation is noisy and that the noise is intrusive and bothersome and interferes with their use and enjoyment of their properties.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Police protection will be provided by the County's local Sheriff's Department and the Maryland State Police. Fire protection will primarily be from the Fallston, Joppatowne and Bel Air Voluntary Fire Departments. The property is served by private well and septic. Trash collection will be handled by a private hauler.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

Generally, if a Special Exception use meets the specific Code requirements, a proposed use is recognized by the Code as a use that is compatible with other uses in the Agricultural District, absent facts and circumstances negating the presumption. The Applicant has failed, in the opinion of the Hearing Examiner to produce any credible evidence in support of her Application and has particularly failed to show that the proposed use meets the requirements set forth in Section 267D(1) of the Harford County Code. These are threshold requirements of any grant for a special exception use.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

There are churches and schools in the overall community but no such structures or uses are located within the immediate vicinity of the proposed use.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is recognized as a use that can co-exist compatibly with other uses permitted in the Agricultural District absent facts and circumstances negating this presumption. As pointed out throughout this decision, the Hearing Examiner finds the record contains substantial facts and circumstances negating the presumption of compatibility.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreational and open space.*

There was no testimony related to potential environmental impacts consequently, the Hearing Examiner is unable to evaluate any impacts related to the environment.

- (10) *The preservation of cultural and historic landmarks.*

Not applicable to the request.

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Based on the foregoing conclusions of law and fact, the Hearing Examiner finds that the use proposed by the Applicant fails to meet the specific standards required pursuant to Section 267-53D(1) of the Harford County Code. The trailers sold from this property are not farm equipment as that term is contemplated by the Harford County Code. Further, testimony established that the storage area for these trailers is not within an enclosed building or otherwise screened from the view of neighboring and adjacent properties and public roads. Based on the testimony of the neighboring property owners it appears that the use is commercial in nature, is not generally compatible with the other residential uses in this neighborhood, creates intrusive noise, blocks the only road that provides ingress and egress to the neighborhood during offloading procedures and has the potential for deleterious impact to property values in the neighborhood. While the Applicant was given every opportunity to produce documentary or testimonial evidence that could potentially have allowed the Hearing Examiner to find to the contrary on these issues, the Applicant chose instead to exercise every possible delay in her refusal to cooperate with legitimate requests for documents that were clearly relevant and, in fact, determinative factors regarding this particular request. The Hearing Examiner was left to draw the only possible inference from the Applicant's failure to produce relevant testimony or documentation. Given the Applicant's failure to produce credible evidence to the contrary, the testimony of the protesting neighbors that did appear leads to the conclusion that this use, at this location, has adverse impacts that negate the presumption of validity generally accorded a special exception use, pursuant to the Harford County Zoning Code.

For all of the factors discussed herein, it is the Hearing Examiner's recommendation to the Board of Appeals that this request be denied.

Date APRIL 16, 2003

William F. Casey
Zoning Hearing Examiner